

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

## Illinois Commerce Commission On Its Own Motion

**VS.**

# Commonwealth Edison Company

**Investigation of tariffs approved in  
Docket No. 13-0386.**

**Docket No. 13-0553**

**STAFF OF THE ILLINOIS COMMERCE COMMISSION**

**BRIEF ON EXCEPTIONS**

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November 18, 2013

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**STAFF OF THE ILLINOIS COMMERCE COMMISSION  
BRIEF ON EXCEPTIONS**

Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, pursuant to the direction of the Administrative Law Judges (“ALJs”) and Section 200.800 of the Illinois Administrative Code (83 Ill. Adm. Code 200.800), respectfully submits its Brief on Exceptions (“BOE”) in the above-captioned matter.

**I. INTRODUCTION / STATEMENT OF THE CASE**

On May 22, 2013, the General Assembly enacted Public Act 98-15, which, among other things, amended Section 16-108.5 of the Act, addressing issues related to certain pension assets, retroactive recovery of certain delivery service costs, and reconciliation of the revenue requirement in effect the prior rate year for utilities participating in performance-based formula rates. P.A. 98-15 provides that it is intended to restate and clarify existing law, to give binding effect to specified legislative intent,

and to supersede specified final orders of the Commission. Along with other new provisions, P.A. 98-15 creates Subsection 16-108.5(k)(1), which states that no earlier than five business days after the effective date, each participating utility (as defined in Section 16-108.5(b)) shall file any tariff changes necessary to implement the amendatory language and a revised revenue requirement under the participating utility's performance-based formula rate. Subsection 16-108.5(k)(1) further required the Commission enter a final order approving such tariff changes and revised revenue requirement within 21 days after the participating utility's filing.

On May 30, 2013, Commonwealth Edison Company ("ComEd") filed tariff pages and revised revenue requirements responsive to P.A. 98-15. On June 5, 2013, the Commission entered an order in Docket No. 13-0386 finding that ComEd's proposed tariff changes made on May 30, 2013 were in compliance with the recent legislation and approving the company's revenue requirement modifications.

On October 2, 2013, the Commission on its own motion, based upon a Staff report which raised questions concerning ComEd's tariff filing of May 30, 2013, and pursuant to the authority of Section 10-113(a) of the Act to rescind, alter or amend its order in Docket No. 13-0386, initiated a proceeding to determine whether the tariff changes filed by ComEd on May 30, 2013, comply with P.A. 98-15. The proceeding is to address the limited specific questions whether the tariffs filed on May 30, 2013: (1) correctly calculated interest on ComEd's reconciliation balance, (2) correctly calculated the Section 16-108.5(c)(5) return on equity ("ROE") collar, and (3) correctly reflected the appropriate tax treatment in calculating interest on the reconciliation balance in the

formula rate tariff as authorized by the Public Utilities Act. Illinois Commerce Commission, ICC Initiating Order Docket No. 13-0553, 2 (October 2, 2013).

An emergency status hearing was held on October 7, 2013, and the parties agreed to a schedule that would allow the Commission to issue an Order prior to November 30, 2013. The People of the State of Illinois, through Attorney General Lisa Madigan (“AG”), the Illinois Industrial Energy Consumers (“IIEC”), the Citizens Utility Board (“CUB”), and the City of Chicago (“City”) were granted leave to Intervene. Staff witness Richard W. Bridal II submitted testimony in this case. ComEd and AG filed testimony independently, while the IIEC, City and CUB filed testimony jointly.

An evidentiary hearing was held in this matter in Chicago, Illinois on October 24, 2013. On November 1, 2013, initial briefs (“IBs”) were filed by Staff, ComEd, AG, and jointly by IIEC, City, and CUB (“IIEC/City/CUB”). On November 6, 2013, reply briefs (“RBs”) were filed by Staff, ComEd, AG, and IIEC/City/CUB.

On November 8, 2013, the ALJs issued a Proposed Order (“ALJPO”). The ALJs set November 18, 2013 for the filing of exceptions.<sup>1</sup> Staff generally agrees with the ALJPO’s findings and conclusions, but recommends a technical change be made for clarification. Pursuant to the direction of the Administrative Law Judges, Staff’s BOE follows.

## **II. PA 98-15 COMPLIANCE**

- A. Do the tariffs filed on May 30, 2013 by ComEd correctly calculate interest on ComEd's reconciliation balance as authorized by the Public Utilities Act?

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<sup>1</sup> All parties agreed to waive Reply Briefs on Exceptions at the October 7 status hearing.

- B. Do the tariffs filed on May 30, 2013 by ComEd correctly calculate the Section 16-108.5(c)(5) return on equity ("ROE") collar as authorized by the Public Utilities Act?
- C. Do the tariffs filed on May 30, 2013 by ComEd correctly reflect the appropriate tax treatments in calculating interest on the reconciliation balance in the formula rate tariff as authorized by the Public Utilities Act?

### **III. IMPLEMENTATION OF RATE FORMULA CHANGES, IF ANY**

Staff recommends minimal technical corrections to language in Section III of the ALJPO which clarify the scope of the formula rate changes authorized by the Order. This proceeding was initiated as an investigation of three specific issues pertaining to changes to ComEd's formula rate made pursuant to PA 98-0015 and approved in ICC Docket No. 13-0386: (1) Do the tariffs filed on May 30, 2013 by ComEd correctly calculate interest on ComEd's reconciliation balance as authorized by the Public Utilities Act; (2) Do the tariffs filed on May 30, 2013 by ComEd correctly calculate the Section 16-108.5(c)(5) return on equity ("ROE") collar as authorized by the Public Utilities Act; and (3) Do the tariffs filed on May 30, 2013 by ComEd correctly reflect the appropriate tax treatment in calculating interest on the reconciliation balance in the formula rate tariff as authorized by the Public Utilities Act? (Initiating Order, 2.) Because PA 98-0015 changed ratemaking on specific issues not only prospectively but also retroactively, in the event that changes are to be made to ComEd's rate formula as a result of this proceeding, the Order should be clear that those changes to rates on a prospective and retroactive basis should be limited to the three issues addressed in this proceeding only.

#### **Proposed Modification**

### **III. IMPLEMENTATION OF RATE FORMULA CHANGES, IF ANY**

ComEd maintains that there is no basis for the Commission to make any change in ComEd's approved rate formula. However, in the

event that there were to be any changes made related to the three issues in this proceeding, all parties agree with ComEd's proposal that in accordance with PA 98-0015 those changes should be given effect both prospectively and retrospectively back through the decision in Docket No. 11-0721, in the form of a single rolled-up credit or charge (as the case may be) applicable in 2014. CCI did not opine on this topic.

We agree with the positions expressed and supported by ComEd, Staff, and intervenors in this docket. In the event that any changes are to be made to ComEd's rate formula, consistent with PA 98-0015, those changes which result from this proceeding will be given effect both prospectively and retrospectively back through the decision in Docket No. 11-0721, in the form of a single rolled-up credit or charge (as the case may be) applicable in 2014.

#### IV. CONCLUSION

WHEREFORE, for all of the following reasons, Staff respectfully requests that the Commission's order in this proceeding reflect all of Staff's recommendations.

Respectfully submitted,

/s/

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